

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

JOHN DANIEL VILLA JR.,

Plaintiff,

No. C 07-01436 WHA

v.

LINDA ROWE, JENNIFER SWINEY,
and BHAWNA JAIN,

Defendants.

**ORDER DENYING CROSS-MOTIONS
FOR SUMMARY JUDGMENT AND
VACATING HEARING**

A prior order in this case on a motion for summary judgment by defendants denied summary judgment as to plaintiff's claim against Drs. Rowe, Swiney, and Jain for violation of the Eighth Amendment for the medical treatment plaintiff received for high cholesterol. That order granted summary judgment against all other claims.

The order stated: "*This matter is ready for trial on the claims upon which defendants[] have been denied summary judgment*" (Dkt. No. 28 at 15 (emphasis added)).

Thereafter, counsel was appointed for plaintiff, who had been proceeding *pro se*, and a new schedule was set. Further discovery was conducted. Then the parties filed the instant cross-motions for summary judgment.

It is evident that pervasive genuine issues of material fact remain, despite the further discovery. A jury will have to decide. The motions are **DENIED**, and the hearing on June 2 is **VACATED**. Please remember that at trial evidence does not always come in the same way the lawyer-prepared declarations pose it on summary judgment, so a Rule 50 motion may possibly be in order despite the denial of summary judgment.

1 As previously set, the pretrial conference will proceed on July 5, 2011, at 2:00 p.m. The
2 parties should be aware that the Court will be in the middle of a months-long, many-defendant
3 criminal trial. For now, the trial in this matter will remain on calendar to begin on July 18, 2011,
4 but that may be subject to change at the pretrial conference.

5 **IT IS SO ORDERED.**

6
7 Dated: May 24, 2011.
8

Wm Alsup

WILLIAM ALSUP
UNITED STATES DISTRICT JUDGE